

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF TEXAS, SAN ANTONIO DIVISION

FILED

2009 APR -6 PM 5:03

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

MARY UPTAIN, Individually and on  
Behalf of the Estate of DOYE UPTAIN

Plaintiff

CASE NO: \_\_\_\_\_

VS.

EMERITUS CORPORATION d/b/a  
WOODBIDGE ESTATES and  
ESC-NGH, L.P. d/b/a WOODBRIDGE  
ESTATES

Defendants

SA09CA02690G  
JURY

**DEFENDANTS' NOTICE OF REMOVAL TO FEDERAL COURT**

COMES NOW Defendants EMERITUS CORPORATION d/b/a WOODBRIDGE ESTATES and ESC-NGH, L.P. d/b/a WOODBRIDGE ESTATES ("Defendants"), and hereby remove this action from the 57<sup>th</sup> Judicial District Court of Bexar County, Texas to the United States District Court for the Western District of Texas, and as grounds therefor would respectfully show as follows:

1. Plaintiff MARY UPTAIN, Individually and on Behalf of the Estate of DOYE UPTAIN ("Plaintiff"), commenced this action on February 23, 2009, in the 57<sup>th</sup> Judicial District Court of Bexar County, Texas, Cause No. 2009-CI-03058, styled *Mary Uptain, Individually and on Behalf of the Estate of Doye Uptain v. Emeritus Corporation d/b/a Woodbridge Estates and ESC-NGH, L.P. d/b/a Woodbridge Estates* (the "State Court Suit").

2. The State Court suit was served on Defendants on or about March 9, 2009. Defendants filed their answer to the State Court Suit on or about March 26, 2009. In accordance with 28 U.S.C.

§1446(a), a true and correct copy of all processes, pleadings and orders, as far as known to Defendants in such action, are attached hereto as Exhibit "A" and made a part hereof.

3. The State Court Suit is a health care liability and wrongful death claim brought by Plaintiff Individually and on Behalf of the Estate of Doye Uptain. Plaintiff alleges Defendants were negligent with respect to their medical care and treatment of Doye Uptain.

4. This is a civil action in which the Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b). Defendant Emeritus Corporation d/b/a Woodbridge Estates is a Washington corporation with its principal place of business in Washington. Defendant ESC-NGH, L.P. d/b/a Woodbridge Estates is a Washington limited partnership with its principal place of business in Washington. Plaintiff is a citizen of the State of Texas. Thus, diversity of citizenship exists.

5. This is a medical negligence and wrongful death case. Plaintiff has alleged numerous categories of damages in the State Court Suit including medical expenses, funeral and burial expenses, pain and suffering of the deceased, mental anguish of the deceased, mental anguish of Plaintiff, loss of companionship, loss of familial relationship and all such other damages provided by law. Therefore, it is facially apparent from the pleadings and the nature of the claim that the amount in controversy is likely to exceed the sum of \$75,000.00 exclusive of interest and costs.

6. The alleged events giving rise to this suit occurred in Bexar County, Texas, which is in the Western District of Texas of the United States District Court. Therefore, venue is proper for this action pursuant to 28 U.S.C. §124(d)(4).

7. This Notice of Removal is being filed in the United States District Court for the Western District of Texas, within thirty (30) days from the date that Defendants were served with Plaintiff's Original Petition, from which Defendants first determined that the State Court Suit was removable.

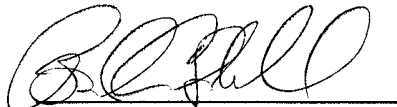
8. Plaintiff has demanded a jury in the State Court Suit.

9. All Defendants have consented to this removal and have joined in this Notice of Removal.

10. Pursuant to 28 U.S.C. §1446(d), Defendants will, promptly after the filing of this Notice, give written notice hereof to all adverse parties and will file a copy of this notice with the Clerk for 57<sup>th</sup> Judicial District Court, Bexar County, Texas.

SIGNED this 3<sup>rd</sup> day of April, 2009.

Respectfully submitted:



Andrea S. Cottrell  
State Bar I.D. No. 24059614  
Bruce S. Campbell  
State Bar I.D. No. 03694600

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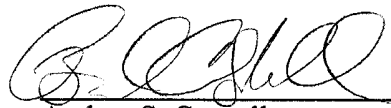
ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was forwarded to all counsel of record pursuant to the applicable Federal Rules of Civil Procedure as follows:

Beth S. Janicek  
Law Offices of Beth S. Janicek  
100 Sandau  
Suite 101  
San Antonio, Texas 78216  
**Via facsimile: 1-210-979-6804**  
**and e-service**

DATED this 3<sup>rd</sup> day of April, 2009.

A handwritten signature in black ink, appearing to read "A. S. Cottrell", written over a horizontal line.

Andrea S. Cottrell  
Bruce S. Campbell